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Advancing the effective filing date in an *inter partes* review proceeding

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Why advance effective filing date?

- Challenged patent
 - Patent Owner: antedate invalidating reference
 - Either: apply *Phillips* claim construction standard
 - Petitioner: ensure timely filing of IPR petition
- Invalidating reference
 - Petitioner: make invalidating reference available as prior art

“Effective Filing Date” under AIA

- Earlier of:
 - Actual filing date, OR
 - Earliest application to which priority/benefit can be claimed
- Applications include:
 - foreign national applications (§ 119(a), (b), (c), and (d));
 - domestic provisional applications (§ 119(e));
 - continuing applications based on prior United States nonprovisional applications (§ 120);
 - divisional applications based on prior United States nonprovisional applications (§ 121); and
 - PCT applications that designate the United States or other countries (§ 365).

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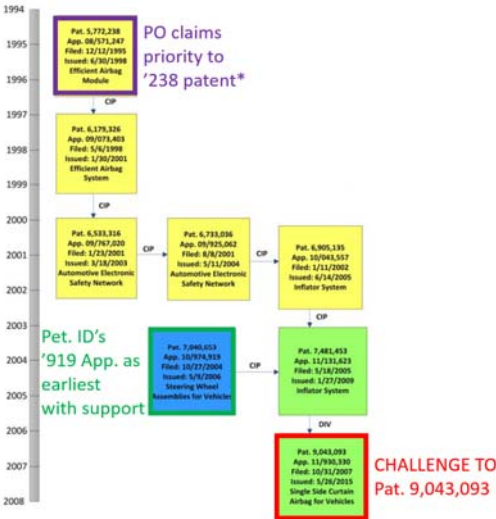
Examples and Practice Tips

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Literal written description support must be shown in each application in the priority chain

Autoliv Asp, Inc. v. American Vehicular Svcs.



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"IPR Case Studies: Why and How to Obtain an Earlier Effective Filing Date"